

3/26/18

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Chapter No. 417  
18/SS36/R1043SG  
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## ***SENATE BILL NO. 2929***

Originated in Senate

*[Signature]*

Secretary

SENATE BILL NO. 2929

AN ACT TO CREATE NEW CHAPTER 52, TITLE 83, MISSISSIPPI CODE OF 1972, TO PROVIDE A FRAMEWORK WITHIN WHICH GUARANTEED ASSET PROTECTION WAIVERS ARE DEFINED AND MAY BE OFFERED WITHIN THE STATE OF MISSISSIPPI; TO PROVIDE DEFINITIONS; TO PROVIDE REQUIREMENTS FOR OFFERING GAP WAIVERS; TO PROVIDE REQUIREMENTS FOR CONTRACTUAL LIABILITY AND OTHER INSURANCE POLICIES THAT INSURE A GAP WAIVER; TO PROVIDE DISCLOSURE REQUIREMENTS; TO PROVIDE FOR CANCELLATION; TO PROVIDE CERTAIN EXEMPTIONS; TO PROVIDE ENFORCEMENT OF THE CHAPTER; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** The following shall be codified as Section 83-52-1, Mississippi Code of 1972:

83-52-1. (1) The purpose of this chapter is to provide a framework within which guaranteed asset protection waivers are defined and may be offered within this state.

(2) This chapter does not apply to:

(a) An insurance policy offered by an insurer under the insurance laws of this state; or

(b) A debt cancellation or debt suspension contract being offered by any national or state-chartered bank or federal

or state-chartered credit union in compliance with 12 CFR Part 37, or 12 CFR Part 721, or any other federal law.

(3) Guaranteed asset protection waivers governed under this chapter are not insurance and are exempt from the insurance laws of this state. Persons marketing, selling or offering to sell guaranteed asset protection waivers to borrowers who comply with this chapter are exempt from insurance licensing and insurance regulation requirements of this state.

**SECTION 2.** The following shall be codified as Section 83-52-3, Mississippi Code of 1972:

83-52-3. The following are terms defined for purposes of this chapter and are not intended to provide actual terms required in guaranteed asset protection waivers:

(a) "Administrator" means a person, other than an insurer or creditor, who issues, makes or provides a GAP waiver, or who performs administrative or operational functions pursuant to guaranteed asset protection waiver programs.

(b) "Borrower" means a debtor, retail buyer or lessee, under a finance agreement.

(c) "Commissioner" means the Commissioner of Insurance for the State of Mississippi.

(d) "Creditor" means:

- (i) The lender in a loan or credit transaction;
- (ii) The lessor in a lease transaction;

(iii) Any "retail seller" of motor vehicles that provides credit to "retail buyers" of such motor vehicles provided that such entities comply with the provisions of this chapter;

(iv) The seller in commercial retail installment transactions; or

(v) The assignees of any of the creditors listed in subparagraphs (i) through (iv) of this paragraph to whom the credit obligation is payable.

(e) "Finance agreement" means a loan, lease or retail installment sales contract for the purchase or lease of a motor vehicle or any other credit extension secured by a motor vehicle.

(f) "Free look period" means the period of time from the effective date of the GAP waiver until the date the borrower may cancel the contract without penalty, fees or costs to the borrower. This period of time shall not be shorter than thirty (30) days.

(g) "Guaranteed asset protection waiver" or "GAP waiver" means a contractual agreement wherein a creditor agrees for a separate charge to cancel or waive, or an administrator agrees for a separate charge to pay, all or part of amounts due on a borrower's finance agreement in the event of a total physical damage loss or unrecovered theft of the motor vehicle. A GAP waiver in which the creditor cancels or waives amount due shall be part of, or a separate addendum to, the finance agreement.

(h) "Insurer" means an insurance company licensed, registered, or otherwise authorized to do business under the insurance laws of this state.

(i) "Motor vehicle" means self-propelled or towed vehicles designed for personal or commercial use, including, but not limited to, automobiles, trucks, motorcycles, recreational vehicles, all-terrain vehicles, snowmobiles, campers, boats, personal watercraft, and motorcycle, boat, camper and personal watercraft trailers.

(j) "Person" includes an individual, company, association, organization, partnership, business trust, corporation, and every form of legal entity.

**SECTION 3.** The following shall be codified as Section 83-52-5, Mississippi Code of 1972:

83-52-5. (1) GAP waivers may be offered, sold or provided to borrowers in this state under this chapter.

(2) GAP waivers may, at the option of the creditor or administrator, be sold for a single payment or may be offered with a monthly or periodic payment option.

(3) Notwithstanding any other provision of law to the contrary, any cost to the borrower for a guaranteed asset protection waiver entered into in compliance with the Truth in Lending Act (15 USC 1601 et seq.) and its implementing regulations, as they may be amended from time to time, shall be

separately stated and is not to be considered a finance charge or interest.

(4) A retail seller or administrator shall insure its GAP waiver obligations under a contractual liability or other insurance policy issued by an insurer. A creditor, other than a retail seller, may insure its GAP waiver obligations under a contractual liability policy or other such policy issued by an insurer. Any such insurance policy may be directly obtained by a creditor, retail seller, or may be procured by an administrator to cover a creditor's or retail seller's obligations. However, retail sellers that are lessors on motor vehicles are not required to insure obligations related to GAP waivers on such leased vehicles.

(5) The GAP waiver shall remain a part of the finance agreement upon the assignment, sale or transfer of such finance agreement by the creditor.

(6) Neither the extension of credit, the term of credit, nor the term of the related motor vehicle sale or lease may be conditioned upon the purchase of a GAP waiver.

(7) Any creditor or administrator that offers a GAP waiver shall report the sale of, and forward funds received on all such waivers to the designated party, if any, as prescribed in any applicable administrative services agreement, contractual liability policy, other insurance policy or other specified program documents.

(8) Funds received or held by a creditor or administrator and belonging to an insurer, creditor or administrator, pursuant to the terms of a written agreement, shall be held by such creditor or administrator in a fiduciary capacity.

**SECTION 4.** The following shall be codified as Section 83-52-7, Mississippi Code of 1972:

83-52-7. (1) Contractual liability or other insurance policies insuring GAP waivers shall state the obligation of the insurer to reimburse or pay to the creditor or administrator any sums the creditor is legally obligated to waive, or administrator is legally obligated to pay, under the GAP waivers issued by the creditor or administrator and purchased or held by the borrower.

(2) Coverage under a contractual liability or other insurance policy insuring a GAP waiver shall also cover any subsequent assignee upon the assignment, sale or transfer of the finance agreement.

(3) Coverage under a contractual liability or other insurance policy insuring a GAP waiver shall remain in effect unless cancelled or terminated in compliance with applicable insurance laws of this state.

(4) The cancellation or termination of a contractual liability or other insurance policy shall not reduce the insurer's responsibility for GAP waivers issued by the creditor or administrator prior to the date of cancellation or termination and for which the premium has been received by the insurer.

**SECTION 5.** The following shall be codified as Section 83-52-9, Mississippi Code of 1972:

83-52-9. Guaranteed asset protection waivers shall disclose, as applicable, in writing and in clear, understandable language that is easy to read, the following:

(a) The name and address of the initial creditor and the borrower at the time of sale, and the identity of any administrator if different from the creditor.

(b) The purchase price and the terms of the GAP waiver, including, without limitation, the requirements for protection, conditions, or exclusions associated with the GAP waiver.

(c) That the borrower may cancel the GAP waiver within a free look period as specified in the waiver, and will be entitled to a full refund of the purchase price, so long as no benefits have been provided.

(d) The procedure the borrower shall follow, if any, to obtain GAP waiver benefits under the terms and conditions of the waiver, including a telephone number and address where the borrower may apply for waiver benefits.

(e) Whether or not the GAP waiver is cancellable after the free look period and the conditions under which it may be cancelled or terminated, including the procedures for requesting any refund due.

(f) That in order to receive any refund due in the event of a borrower's cancellation of the GAP waiver agreement or



early termination of the finance agreement after the free look period of the GAP waiver, the borrower, in accordance with terms of the waiver, shall provide a written request to cancel to the creditor, administrator or such other party. If the GAP waiver is cancelled due to the early termination of the finance agreement, the borrower must provide the request within ninety (90) days of the occurrence of the event terminating the finance agreement.

(g) The methodology for calculating any refund of the unearned purchase price of the GAP waiver due, in the event of cancellation of the GAP waiver or early termination of the finance agreement.

(h) That neither the extension of credit, the terms of the credit, nor the terms of the related motor vehicle sale or lease, may be conditioned upon the purchase of the GAP waiver.

**SECTION 6.** The following shall be codified as Section 83-52-11, Mississippi Code of 1972:

183-52-11. (1) Guaranteed asset protection waiver agreements may be cancellable or noncancellable after the free look period. GAP waivers shall provide that if a borrower cancels a waiver within the free look period, the borrower will be entitled to a full refund of the purchase price, so long as no benefits have been provided; or in the event benefits have been provided, the borrower may receive a full or partial refund pursuant to the terms of the waiver.

(2) In the event of a borrower's cancellation of the GAP waiver or early termination of the finance agreement, after the agreement has been in effect beyond the free look period, the borrower may be entitled to a refund of any unearned portion of the purchase price of the waiver unless the waiver provides otherwise. In order to receive a refund, the borrower, in accordance with any applicable terms of the waiver, shall provide a written request to the creditor, administrator or other party. If the GAP waiver is cancelled due to the early termination of the finance agreement, the borrower must provide the request within ninety (90) days of the event terminating the finance agreement.

(3) If the cancellation of a GAP waiver occurs as a result of a default under the finance agreement or the repossession of the motor vehicle associated with the finance agreement, or any other termination of the finance agreement, any refund due may be paid directly to the creditor or administrator and applied as set forth in subsection (4) of this section.

(4) Any cancellation refund under subsection (1), (2) or (3) of this section may be applied by the creditor as a reduction of the amount owed under the finance agreement, unless the borrower can show that the finance agreement has been paid in full

**SECTION 7.** The following shall be codified as Section 83-52-13, Mississippi Code of 1972:

83-52-13. Sections 83-52-5(3), 83-52-9 and 83-52-15 of this chapter are not applicable to a guaranteed asset protection waiver

offered in connection with a lease or retail installment sale associated with a commercial transaction.

**SECTION 8.** The following shall be codified as Section 83-52-15, Mississippi Code of 1972:

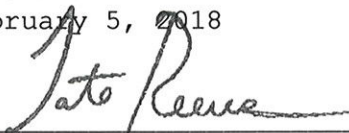
83-52-15. The commissioner may take action which is necessary or appropriate to enforce the provisions of this chapter and to protect guaranteed asset protection waiver holders in this state. After proper notice and opportunity for hearing, the commissioner may:

(a) Order the creditor, administrator or any other person not in compliance with this chapter to cease and desist from further guaranteed asset protection waiver-related operations which are in violation of this chapter.

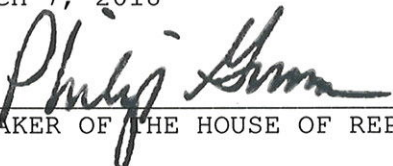
(b) Impose a penalty of not more than Five Hundred Dollars (\$500.00) per violation and not more than Ten Thousand Dollars (\$10,000.00) in the aggregate for all violations of similar nature. For purposes of this paragraph (b), violations shall be of a similar nature if the violation consists of the same or similar course of conduct, action, or practice, irrespective of the number of times the conduct, action, or practice which is determined to be a violation of this chapter occurred.

**SECTION 9.** This act shall take effect and be in force from and after July 1, 2018.


PASSED BY THE SENATE  
February 5, 2018

  
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PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES  
March 7, 2018

  
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SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR

  
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GOVERNOR

*March 26, 2018*  
*10:28 AM*